IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 486 OF 2007

Mr. Rajesh Nagji Nishar ..Applicant

Vs.

Mr. Ramji Tokarshi Gala and anr. ..Respondents

Mr. M.K. Kocharekar for applicant.
Mr. Manish Bohra i/by Mr. A.S. Khan and Associate for respondent no.1.
Mr. S.R. Shinde, APP for State.

CORAM: B.H. MARLAPALLE, J.

Date : July 10, 2007.

P.C.:

1. Heard Mr. Kocharekar the learned counsel for the applicant who is impleaded as accused no.2 in Criminal Case No. 2531/S/2003 for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The cheque dated 15/5/2002 for an amount of Rs.1,00,000/- issued in discharge of the loan repayment liability was allegedly dishonour as per the cheque return memo dated 17/5/2002 and received by the complainant on 18/5/2002. Statutory

notice was issued on 21/5/2002 calling upon the said accused to make the payment of Rs.1,00,000/- within a period of 15 days from the receipt of the notice. The notice was received by the applicant on 28/5/2002 but within a period of 15 days the accused failed to make the payment of Rs.1,00,000/- and, therefore, the complaint was presented before the learned Additional Chief Metropolitan Magistrate, 4th Court at Girgaon sometimes in the first week of July, 2002. Process came to be issued against three accused and the said order was challenged in Criminal Revision Application No. 1542 of 2005 which has been dismissed by the learned Additional Sessions Judge, Greater Bombay on 30/11/2006.

2. Mr. Kocharekar the learned counsel for the applicant-accused has referred to the averments made in the complaint and submitted that the issuance of cheque for an amount of Rs.1,00,000/- was not towards the repayment of loan amount or any legal dues and it was only on the threats of the police by taking cognizance of the complaint filed by the complainant.

3. The complainant has described the contribution made by him and the promise of repayment made by the accused and, therefore, the issue of payment in respect of legal liability or legal dues will have to be considered only after the parties adduce evidence before the learned Metropolitan Magistrate. The reasoning set out by the revisional court in refusing to quash and set aside the order of process cannot be termed as perverse or illegal and hence there is no occasion to either quash or set aside the said order or to invoke the inherent powers of this court under Section 482 of Cr.P.C. so as to quash the order of issuance of process against the applicant.

4. The application is, therefore, rejected summarily.

(B.H. Marlapalle,J.)